

August 2, 2005

Western Washington Municipal SW Comment
Bill Moore
WA Department of Ecology
Water Quality Program
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Ava Frisinger, Mayor
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RE: Comments on Preliminary Draft of NPDES Phase II Municipal Stormwater Permits
for Western Washington

Dear Mr. Moore:

The City of Issaquah appreciates this opportunity to comment on the preliminary draft NPDES Phase II Municipal Stormwater Permit. We understand the necessity of issuing this permit in accordance with the federal requirements, and the City strongly supports having a Phase II permit that provides the necessary legal coverage for stormwater discharges from our municipal system.

We have reviewed the preliminary draft permit and have identified several issues that must be resolved before the next draft permit is issued. It is important to note, however, that we don't oppose the fundamental purpose and need for the permit. In fact, when we submitted the Phase II permit application in 2003 we were confident that our current programs largely met the six minimum control measures called for in the Environmental Protection Agency (EPA) Phase II guidelines. Our current stormwater program accomplishes a majority of the EPA requirements while it continues to be perfected.

The greatest issue we have with the proposed General Permit is the very large burden the permit requirements will have on our staff and our limited budget resources. Those original six minimum measures have ballooned into many different prescriptive activities and reporting requirements that go far beyond our responsibilities for operating our municipal separate stormwater system. These requirements cannot be justified when compared to EPA's intent for the Phase II program, or when tested against their effectiveness towards improving water quality in our lakes and streams. The Phase II permitting program is yet another unfunded mandate that will be especially hard on smaller jurisdictions such as Issaquah, and Ecology must do everything it can to minimize the financial impact of this program on our city and others.

Specifically, the City wants Ecology to address these issues and respond accordingly:

1. **Pre-developed, forested conditions for stormwater flow control.** The requirement that all redevelopment projects mitigate stormwater flows to that which existed under pre-developed, forested conditions, regardless of existing site conditions, can be difficult if not impossible to attain in existing urban areas such as Issaquah. The high costs of stormwater retrofitting will make many urban redevelopment projects uneconomical, and the expectation that habitat and flooding conditions can be improved in local urban streams through higher stormwater standards is largely misguided because redevelopment projects generally affect only a small percentage of the stormwater runoff from an urban area. This requirement will place a very large disincentive on redevelopment in our city with the consequent pressure to push into urban fringes or rural areas where land parcels are larger and less expensive for accommodating detention facilities. This runs counter to the goals of the Growth Management Act, which concentrates growth impacts into existing urban areas, a goal we take seriously. Provisions in Ecology's stormwater manual that provide a process for allowing lower detention standards in existing urbanized watersheds offer little towards addressing this issue because they can be applied to only a few limited cases. We also believe that requiring mitigation in excess of a project's impact, which this standard does, would leave us vulnerable to "takings" claims.

2. **Budgeting and Schedule.** The schedule and deadlines for submittal of various materials in the annual report are unattainable for all but the most well funded jurisdictions. It will take many years for most jurisdictions to comply with the new stormwater program, particularly if budgets need to be developed, proposed and adopted, and many jurisdictions will likely reject the permit program entirely because of financial hardships. Initial compliance with the permit should not be evaluated until the end of the first 5-year permit term.
3. **Reporting and Permit Coverage.** Submitting detailed annual reports on all activities relating to the permit, as proposed by Ecology, would create a huge and unnecessary paperwork burden that Ecology admitted won't even be reviewed by their staff. These requirements need to be relaxed or reported less frequently. Even if the reporting requirements are reduced, how can we be assured – in response to a legal challenge – that permit coverage is being provided by the permit if Ecology is unable to demonstrate an administrative process for reviewing and approving the permit?
4. **Permit details.** The permit contains too many prescriptive details on how the permittee shall comply with the permit. Local flexibility to meet stated goals should be allowed instead. We don't agree with Ecology's approach that the permit needs to be prescriptive in order to make it easier to administer at their end. This only adds burden at our end.
5. **Monitoring.** Most aspects of the monitoring program have no relationship to the intent of the EPA guidance, are falsely justified as needed for "adaptive management", or otherwise do not provide any meaningful or useful information. The cost implications for the monitoring requirement can be very significant for little benefit. We see no purpose in monitoring stormwater BMP performance, which should be the responsibility of Ecology as the regulating agency and stormwater manual publisher to keep on top of, or monitoring receiving waters, which Ecology also has the regulatory responsibility to do. Monitoring for the Phase II permit should be limited to assessing the effectiveness of municipal operations and activities on stormwater quality, such as identifying illicit discharges and evaluating maintenance levels of service.
6. **Stormwater facility inspections.** Annual inspection of all stormwater facilities is unnecessary, except for certain critical facilities. A three-year cycle is much more reasonable to address common issues such as vegetation management and minor repairs that don't normally affect how the facility operates. To allow for start-up costs and time, initial jurisdiction-wide coverage should not be required until the end of the first 5-year permit cycle.

I encourage you to continue working collaboratively with the representatives from the American Public Works Association Stormwater Managers Committee, the Association of Washington Cities, and the Washington State Association of Counties on resolving these issues. I understand that the Phase II jurisdictions are unanimous in believing that the Phase II permit is unworkable in its current form.

Sincerely,



Ava Frisinger
Mayor

cc Senator Cheryl Pflug
 Representative Jay Rodne
 Representative Glenn Anderson
 Bob Brock, Public Works Director
 Bret Heath, Public Works Operations Director
 Kerry Ritland, Senior Water Resource Engineer